IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5755 of 2002
With
CIVIL APPLICATION No. 6551 of 2002
In SPECIAL CIVIL APPLICATION No. 5755 of 2002

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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NEDARIA VIJAYKUMAR KANTILAL - Petitioner(s)
Versus
COLLEGE OF FIRE TECHNOLOGY & 3 - Respondent(s)

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Appearance :
MR MUKTESH V PATEL for Petitioner(s) : 1,
MR ASIM PANDYA, for Respondent(s) : 1 - 2.
MRS VD NANAVATI for Respondent(s) : 3,
MR AJ DESAI, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 09/10/2007

ORAL JUDGMENT

1. Heard Mr.M.V. Patel, learned advocate for the petitioner, Mr.Asim Pandya, learned advocate for the

respondents No.1 and 2, Ms.Vaibhavi D. Nanavati, learned advocate for the respondent No.3 and Mr.A.J. Desai, learned Assistant Government Pleader for the respondent No.4.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

> “7. Therefore the petitioner prays that Your Lordship may be pleased :-
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> (A) to admit this petition.
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> (B) to issue a writ of mandamus, or an appropriate writ or direction to the respondents for the legal right of the petitioner.
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> (C) to order the respondents to allow the petitioner to pay up his annual examination fee for the annual examination held on 27.6.2002.
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> (D) to order the respondents to allow the petitioner to appear at the annual examination held on 27.6.2002.
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> (E) to declare the actions of the respondents to disallow to pay the annual fee and to disallow to appear at the annual examination

fee of the petitioner is unjust, improper and illegal.

(F) to award the cost of the petition to the petitioner by respondents No.1 and 2.

(G) any relief deemed fit in the circumstances may be kindly granted.”

3. The facts stated briefly are that the respondent No.1 College of Fire Technology had published an advertisement dated 24.10.2001 inviting applications for admission in respect of its Fire Technology course. The eligibility criteria stipulated in the said advertisement was (1) 12th Science pass, or (2) Diploma Engineering Course. It was clarified that, even if the candidate had secured passing marks in 12th Science, he would have chances of getting admission in the current year. It was further clarified that candidates who had completed the Diploma Engineering Course after 10th Standard were also eligible to secure admission, and in case of Diploma Engineering, it was not necessary to have passed 12th Science. Pursuant to the said advertisement, the petitioner who had passed 10th Standard Examination and possessed a Diploma in Mechanical Engineering, applied for admission to the respondent No.1. Pursuant thereto, the petitioner was given admission upon payment of Rs.32,300/- by way of first instalment. Subsequently, the petitioner also paid the second instalment of

Rs.57,500/-. The petitioner attended the classes in respect of the said course regularly. The petitioner appeared in the first and second sessional examinations as well as in the preliminary examination held in May 2002. The annual examination was to commence on 27.6.2002, hence the petitioner went to pay the examination fee of Rs.1,000/-. However, the same was not accepted by the respondent No.1 on the ground that his admission was not granted by the Gujarat University as he had not passed the Standard 12th Examination and that his admission has been cancelled.

4. It is in the aforesaid circumstances that the petitioner approached this Court by way of present petition seeking the reliefs noted hereinabove.

5. The petition was filed on 24.6.2002 and was moved immediately. On 25.6.2002, this Court issued Rule in the matter and granted ad-interim relief directing the respondents to allow the petitioner to pay his annual examination fee for the annual examination which was to be held on 27.6.2002. Subsequently, by order dated 29.11.2002 the petitioner was permitted to attend the second year of B.Sc. (Fire).

6. Ms.V.D. Nanavati, learned advocate for the respondent No.3 – University has stated on instructions that thereafter the petitioner has been permitted to pursue further studies in respect of the

said course and has appeared and passed the third year B.Sc. (Fire) Examination in June 2004 and degree certificate has been awarded to the petitioner by the respondent No.3 – University.

7. Looking to the reliefs prayed for in the petition, substantive reliefs are claimed under paragraphs 7 (C), (D), (E) and (F). Considering the aforesaid reliefs in the light of the interim orders passed in the matter, the reliefs prayed for under paragraph 7(C) and (D) stood virtually allowed by the interim order dated 25.6.2002 whereby ad-interim relief had been granted in terms of para 7 (C) and (D). Insofar as the relief prayed for under para 7(E) is concerned, the said issue has been rendered academic in view of the fact that the petitioner has been permitted to pursue further studies and complete the said course. The only relief that remains is the prayer to award cost of the petition in favour of the petitioner by respondents No.1 and 2. Hence, the learned Advocates for the respective parties were heard in this regard.

8. Mr.M.V. Patel, learned advocate for the petitioner has submitted that the respondents No.1 and 2 had invited applications from students who possessed Diploma in Engineering without having passed the 12th Standard, without obtaining the approval of the University regarding the eligibility of such candidates to secure admission in the B.Sc. (Fire) Course. This led to a situation where the

petitioner was constrained to approach this Court just before the commencement of the annual examination without any default on his part, which resulted into untold hardship to the petitioner. Mr. Patel urged that the aforesaid situation was a creation of the respondents No.1 and 2, hence, they should be called upon to compensate the petitioner who had no option but to bear the cost of the present litigation, despite the fact that he could barely afford to pay the exorbitant fees charged by the respondents No.1 and 2 for the course in question. He, therefore, urged that the prayer sought for vide paragraph 7(F) be granted and the respondents No.1 and 2 be directed to pay exemplary costs to the petitioner.

9. On the other hand, Mr.Asim Pandya, learned Advocate for the respondents No.1 and 2 has submitted that the B.Sc. (Fire) Course is a totally new course, which has been introduced for the first time, by the respondents No.1 and 2. He has contended that the eligibility criterion for admission to regular B.Sc. Course, namely passing of the Gujarat Secondary Education Board Examination or its equivalent, had been laid down by the University way back in 1978, and possibly because there is no change in the B.Sc. Course, the University has not changed the said criterion. He has submitted that the respondents No.1 and 2 had come to the conclusion that it would be better if a chance is given to students who have passed Diploma in Engineering for admission to the

First Year B.Sc. (Fire) Course, and accordingly, under the bonafide belief that the University would approve the said criterion, they had admitted two students who were holding Diploma in Engineering. However, the University has plainly refused to consider the change in the original criteria laid down in the year 1978. On the question of compensation, he has submitted that the admission of the petitioner to the First Year B.Sc. (Fire) course has not at all adversely affected his educational career, as even otherwise he was not entitled to admission in the regular B.Sc. Course, hence it was not as if he was being deprived of pursuing studies in any particular course on account of any act or omission of the respondents No.1 and 2. Moreover, now that the petitioner has completed the very course in which he had been granted admission and has already been awarded a B.Sc. (Fire) degree, no real prejudice has been caused to him. He has accordingly urged that this is not a fit case for payment of compensation.

10. Having heard the learned Advocate for the respective parties, this Court is of the view that the learned Advocate for the petitioner is justified in seeking the relief prayed for vide paragraph 7(F) of the petition. From the facts emerging from the record of the case, it is evident that the petitioner had taken admission to the course in question on the promise held out by the respondents No.1 and 2 in the notice inviting applications, wherein it was

specifically stated that Diploma Engineering candidates who had not passed the 12th Standard were eligible to get admission for the said course. Thereafter, the petitioner paid up the fees, attended college and appeared in the sessional examinations, and at the fag end of the year, the fees for the final examination were not accepted from the petitioner, stating that his admission was liable to be cancelled as he did not possess the necessary qualifications for admission to the said course. The annual examination was to be held on 27.6.2002, and the petitioner instead of concentrating on his studies was compelled to knock the doors of this Court just two days prior to the commencement of the exams. These facts speak for themselves.

11. For the foregoing reasons, this Court is of the view that the prayer for costs deserves to be allowed. Mr. Patel has urged that costs of Rs.10,000/- be awarded. However, as submitted by Mr. Pandya, learned Advocate for the respondents No.1 and 2, no real prejudice has been caused to the petitioner in view of the fact that substantial reliefs prayed for in the petition were immediately granted to the petitioner, and thereafter he was permitted to complete the course and awarded a B.Sc. (Fire) degree. However, as noted hereinabove, the petitioner had to suffer the cost of the litigation without any default on his part. In the circumstances, if the petitioner is awarded Rs.5,000/- by way of costs, the same would meet the

ends of justice.

12. In the result, the petition succeeds and is accordingly allowed. The respondents No.1 and 2 shall pay to the petitioner Rs.5,000/- as cost of this petition within a period of two months from today. Rule is made absolute, accordingly.

Order on Civil Application No.6551 of 2002.

In view of the order passed in the main petition, this application does not survive, and is disposed of accordingly.

(HARSHA DEVANI, J.)

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